

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DARYL STEPHEN,  
Plaintiff,  
  
-v-  
  
TERRY HALL, ET AL.,  
Defendants.

19-CV-2225 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

In an October 29, 2019 order of service, defendant David Jakab was ordered to provide Plaintiff with information allowing Plaintiff to serve a John Doe defendant, after which Plaintiff was instructed to file a third amended complaint naming such defendant. (Dkt. No. 14 at 2–3.) The docket does not indicate that either of these actions took place.

It appears that the only claims left are state-law claims. Defendant David Jakab only faces a Section 1983 claim, which appears unlikely to succeed for the reasons stated in Judge Stanton's May 2019 Order. (Dkt. No. 9 at 4.) To the extent that Plaintiff alleges additional federal claims against Jakab (*see* Dkt. No. 12 at 6, 8–9), those claims also appear to fail for the reason that Jakab is not a state actor. Moreover, because the last incident identified in the Second Amended Complaint allegedly occurred on March 10, 2016 (*id.* at 4) – more than three years before Plaintiff's filing of the Second Amended Complaint – those same federal claims appear to be time-barred. With those claims dismissed from the case, only state-law claims against Jakab survive. (*See* Dkt. 12 at 10–13.)

The same analysis applies to the claims asserted against defendant Terry Hall, who is also a private party. Additionally, nothing on ECF indicates that Hall was ever served with the

summons and Second Amended Complaint, despite the summons beings issued to Plaintiff on October 29, 2019. (Dkt. No. 15.)

Finally, as referenced above, it appears that Jakab never provided any information to Plaintiff regarding the investigator's identity, and that, in turn, Plaintiff never filed a Third Amended Complaint naming the John Doe. To date, no investigator has been identified. As the naming of a party as "John Doe" does not toll the statute of limitations, any federal claim to be brought against that defendant would appear to be time-barred as well.

Plaintiff is directed to provide the Court with an update about the status of this case, including whether Jakab provided the ordered information, and Plaintiff shall show cause why this case should not be dismissed, given the lack of federal-law claims.

If Plaintiff fails to do so by January 5, 2021, the action will be dismissed.

SO ORDERED.

Dated: October 30, 2020  
New York, New York

  
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J. PAUL OETKEN  
United States District Judge

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